

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TRAVELERS INSURANCE CO.,	:	CIVIL ACTION
	:	NO. 02-1047
Plaintiff,	:	
	:	
v.	:	
	:	
RODHAM STEM, ET AL.,	:	
	:	
Defendants.	:	

M E M O R A N D U M

EDUARDO C. ROBRENO, J.

July 29, 2002

This case involves a fire that occurred on March 3, 2000, at 73 Constitution Avenue, Doylestown, Pennsylvania, which caused substantial damage to the adjacent properties. The plaintiff, Travelers Insurance Co. ("Travelers") is an insurance company who brought this action as subrogee of Mollie Mullaney and Jason Wagner. Mullaney and Wagner were owners of adjacent properties which were damaged as a result of the fire and who were compensated by Travelers for losses under their insurance policies. Following a bench trial, and pursuant to Fed. R. Civ. P. 52, the Court makes the following findings of fact and conclusions of law:

The property at 73 Constitution Avenue was owned by defendants Rodham and Shari Stem, who leased the property to James Salvatore and Marie Volmer from November 1998 to March 3, 2000. Prior to leasing to Salvatore and Volmer, Rodham Stem had

leased the property from 1981 to 1998 to his brother-in-law. The fire originated on the first floor of the house near a wood burning stove, which defendant Rodham Stem installed in 1974 or 1975. The flue for the stove consisted of a metal piece that connected the stove to a terra cotta pipe within the wall. Rodham Stem replaced the metal piece of the flue in the late 1970s, but did not replace or remove the flue thereafter. Rodham Stem testified that the metal piece of the flue had a life span of approximately five years. The fire was caused when gasses escaped through a crack in a terra cotta pipe and, over a long period of time, caused the surrounding wood to lose its moisture and ignite.

The plaintiff's expert, Robert Buckley, testified that the crack existed well over a year prior to the fire of March 3, 2000. Additionally, although the defendants' expert, Louis H. Gahagan, did not indicate a precise time that the crack had existed, he noted that in order for the wood surrounding the pipe to lose its moisture to the point of becoming combustible, the wood must dry out over a long period of time. Both experts concurred that the stove should be inspected regularly, although disagreeing on whether the inspection should be conducted by a professional inspector or a homeowner. Both indicated, however, that in order to properly inspect the stove, the inspector must look up through the flue, which would require disassembling the

metal flue that connected the stove to the terra cotta pipe. If such an inspection occurred, the crack in the terra cotta pipe would have been visible. Rodham Stem testified that he never removed the metal flue to inspect the terra cotta pipe during the time he leased the property to Salvatore and Volmer nor during the time he leased the property to his brother-in-law, although he did testify that he believed that his brother-in-law had done so.

The issue in this case is what, if any, duty is owed by an out of possession owner of land to the owner or occupant of adjacent properties for damage sustained as a result of a fire which commenced in the land owned by the out of possession owner and spread to the adjacent properties. The Restatement of Torts (Second), § 379, adopted by the Pennsylvania Supreme Court in Foley v. Pittsburgh-Des Moines Co., 363 Pa. 1, 36, 68 A.2d 517, 534 (1949), provides that "[a] lessor of land who transfers its possession in a condition which he realizes or should realize will involve an unreasonable risk of physical harm to others outside the land, is subject to the same liability for physical harm subsequently caused to them by the condition as though he had remained in possession."¹ Under the Restatement of Torts

¹ Although both parties talked about a township ordinance which allegedly had been adopted by the Township of Doylestown and which required yearly inspections of the fireplace, neither party offered the ordinance into evidence. Thus, the court need not decide whether the failure to inspect constituted negligence

(Second), § 365, adopted by the Pennsylvania Supreme Court in Ford v. Jeffries, 474 Pa. 588, 593, 379 A.2d 111, 113 (1977), "[a] possessor of land is subject to liability to others outside the land for physical harm caused by the disrepair of a structure . . . if the exercise of reasonable care . . . would have made it reasonably safe by repair or otherwise." Although the defendants rely on landlord and tenant cases to contend that generally a landlord is not subject to liability to the tenant or to others on the premises for harm caused by a defective condition of the property, those cases are "not applicable to third persons who are injured outside the leased land." Foley, 363 Pa. at 36, 68 A.2d at 534.

In this case, the defendant Rodham Stem admitted that in the nearly twenty years that he leased the property, he never removed the metal flue to inspect the terra cotta pipe to determine whether it was in a safe condition. It is more likely than not that the crack on the pipe, which would have been visible if the metal flue was removed, had existed for over a year before the fire. The court concludes that the crack in the pipe could have been discovered through the exercise of

per se or simply evidence of negligence. The failure to offer the ordinance as proof, however, is not fatal to plaintiff's case, in that the court finds that under the circumstances of this case, the out-of-possession landlord had a duty to inspect under § 379 of the Restatement because the defendants realized or should have realized that failure to inspect the fireplace created an unreasonable risk of harm to those outside the land.

reasonable care by the defendants, that defendants' failure to inspect the terra cotta pipe and their reliance on a mere belief that the brother-in-law may have inspected it was unreasonable, and thus the defendants are liable to the plaintiff for the damage caused as a result of the fire. The parties have stipulated that the damages in this case are \$114,900.59.

Accordingly, judgment shall be entered in favor of the plaintiff and against the defendants in the amount of \$114,900.59.